

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 797 of 1977

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HARJIBHAI KESHAVBHAI HARIJAN

Versus

DANABHAI LAKHABHAI VANKAR

Appearance:

MRS KETTY A MEHTA for Petitioners
MR IQBAL M MALIK for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 14/03/2000

ORAL JUDGEMENT

#. The judgment and decree dated 30th July, 1977 of Civil Judge (SD), Narol are under challenge in this appeal. The brief facts of this appeal are that two civil suits No : 35 of 74 and 68 of 73 were decided by the trial court through a common judgment. Both the

suits seeking permanent injunction were dismissed. It is informed by the learned counsel for the appellants of this appeal that no first appeal has been filed against the judgment and decree under Civil Suit No : 68 of 73. Consequently, the judgment and decree of Civil Suit No : 35 of 74 is only under challenge in this appeal.

#. Both the plaintiffs of two suits claimed to be owner in possession of the land of Survey No : 253 / 28 admeasuring 3 acres situated within sim land of village Moriaya, Taluka Sanand. The land was said to be of new and impartible tenure and it was standing in the revenue record as occupant in the name of plaintiff of Civil Suit No : 68 of 73. It was alleged that the land was cultivated by the plaintiff and various crops were grown thereon. The defendant wanted to cut and harvest the standing crops and also wanted to dispossess the plaintiff, hence, suit for permanent injunction was filed.

#. The other suit was for permanent injunction, where the plaintiff of that suit was likewise claiming to be in possession of the suit land. Both the suits were contested on variety of grounds upon which, five issues were framed by the trial court and these issues were considered by the trial court to cover the controversy involved in two suits. The finding of the trial court on valuation of the suit, is not under challenge in this appeal, so also finding on issued No : 2. On issue No : 3, the finding is that the plaintiff is in possession of the suit land. It was held by the trial court that the suit is not barred by limitation and that it is maintainable. However, keeping in view the subsequent events that the land in question was fortified by the Government, the trial court found that irrespective of question of possession of the plaintiffs of two suits, they could not establish legal and valid title and as such, the trial court was of the view that injunction could not be granted only on the strength of alleged possession and unless prima facie title to the land as on the date of suit and also on the date of the judgment and decree was established, no injunction could be granted. The trial court found from Exh.126 - the certified copy of the order of Assistant Collector dated 23rd September 1974 that the disputed land being in the name of plaintiff, was given to him on new and impartible tenure by order of the Assistant Collector dated 18th August, 1952 and necessary entry was made in the record of right on 12th November, 1973. This order stood in the name of Harjibhai Neshrabhsi who was cultivating the said land since 1958. The trial court disbelieved that the said

land was sold to Harjibhai by Danabhai on 21st March, 1958 and that the document in this behalf was considered by the trial court and the same was found to be inadmissible because it was not registered sale deed executed on duly stamp paper. The trial court therefore did not commit any illegality in ignoring the said document.

#. Ms.Ketty Mehta, however, argued that this document was produced to show that possession was delivered in pursuance of this document. However, this land was subsequently forfeited to the Government during the pendency of the suit and this fact was brought on record by way of amendment in the written statement. The subsequent event was likely to be considered by the trial court. Even if the plaintiffs were in possession on the date of the suit but subsequently, the title passed in favour of the Government on account of forfeiture, there could not be any occasion for granting injunction on mere strength of possession.

#. In view of above discussions, I do not find any error of law or fact in the judgment under appeal. The appeal has therefore no merit and is bound to fail.

#. The appeal is hereby dismissed. No order as to costs.

Date : 14-3-2000 [D. C. Srivastava, J.]

#kailash#